



Report to the Auburn City Council

Action Item
17 Agenda Item No.

<i>[Signature]</i> City Manager's Approval

To: Mayor and City Council Members
From: Michael G. Colantuono, City Attorney
Date: June 27, 2011
Subject: Ordinances on Solicitations and Aggressive Solicitations

The Issues

Pursuant to the instruction of the City Council at its June 8, 2009 meeting, staff is returning two ordinances for the City Council's review and consideration:

1. An ordinance to amend Chapter 116 of the Municipal Code relating to solicitations; and
2. An ordinance to add Chapter 121 to the Municipal Code relating to aggressive solicitations (panhandling).

Conclusions and Recommendations

Recommendations from the City Attorney:

1. *Update or Repeal Chapter 116.* If the Council does not wish to adopt the attached ordinance to update Chapter 116, it should repeal the existing chapter, as that solicitation ordinance does not comply with current cases construing the First Amendment as it gives too much discretion to the Police Chief in regulation solicitations. The city is not now enforcing that ordinance for these reasons.
2. *Ensure Content-Neutrality.* A city's regulations of speech must be content neutral (e.g., not favoring certain types of solicitation over other types of solicitation), and impose only reasonable restrictions on the time, place, or manner of the speech. It is a policy determination whether to adopt either of the ordinances but any amendments to these ordinances must maintain that content-neutral character.

Recommendations from the Chief of Police:

1. *Adopt the Solicitation Ordinance.* The residents and business owners of Auburn have an expectation of their Police Department to provide a crime free and safe environment in which to live, work and play. This expectation requires the enforcement of state and local statutes all the while balancing the rights afforded citizens through the Constitution of the United States. Individuals enjoy the ability to move freely about this community without restriction and to engage in business activities such as door to door sales of goods and services. The Police Department has the difficult job of balancing individual's legitimate

pursuit of free enterprise with prevention and enforcement efforts to maintain a safe and secure community.

Public safety requires the implementation of this constitutionally valid permit process applicable to all citizens and/or groups engaged in the solicitation of goods and services. The process requires the issuance of time specific permits to any organization, business, or individual applicant with said issued permit to be carried by each individual while conducting business. The application requires the identification of the organization, of the individuals involved in door to door solicitation/sales, a description of goods/services being sold, and an overview of the sales message. Local residents and business owners are encouraged to contact the city to confirm valid permit holders in their area, thus offering some enhanced security, however no guarantees can be made by this minimally intrusive process. In instances of solicitation without a permit, the police department shall respond and take the necessary action to gain compliance with the ordinance.

This ordinance and process has in years past served the city well as it has helped ensure businesses have a properly issued business license from the city. The license fees help to generate needed revenue for use in maintaining ongoing city services. This process places licensing requirements upon these individuals engaged in short term/limited business enterprise in a similar manner to the licensing requirements of long standing business owners located within the City. Non-profit organizations are required to obtain the same business license and solicitor permit as private enterprise; however they are exempt from payment of business license fees as specified by the Revenue and Taxation Code.

Finally, the adoption of this updated ordinance gives law enforcement and city officials the ability to support legitimate business pursuits and lessen or prevent non-compliant and possibly criminal activity within the City. The police department and city finance can respond to complaints by the public in a more informed manner as to individuals doing business and complying with local regulations versus those individuals attempting to bypass local regulations and engage in criminal behavior with unsuspecting community members.

2. *Adopt the Aggressive Solicitation Ordinance.* The Auburn Police Department supports the adoption of an aggressive solicitation ordinance for the City of Auburn. Aggressive solicitation, also commonly referred to as "panhandling", has been an increasingly difficult problem throughout the City of Auburn, County of Placer, and numerous cities across the nation. Law enforcement agencies struggle to find avenues to deal with aggressive persons who approach pedestrians in shopping centers, bank ATM'S, in motor vehicles stopped at intersections, or other locations asking for money. Local citizens have increasingly reported panhandlers standing in front of them in such a manner they have felt obstructed in their movement and compelled to donate money out of fear.

Local business owners and citizens have complained about panhandlers multiple times only to be told the City has yet to adopt an ordinance allowing enforcement of this, at times, very intimidating behavior. When solicitors are contacted by officers, business

owners and store managers, they will move on to another location and ignore the request to stop panhandling. By adopting this ordinance, police can cite violators when appropriate and continue to direct these individuals to obtain assistance through available County and/or non-governmental service organization providers. A number of non-profit organizations have worked diligently to meet the needs of the homeless throughout Placer County and these resources are ready available to any person willing to pursue those services.

Finally, research indicates most aggressive solicitors within the City are homeless persons that have lived in and about Auburn for an extended period of time. They frequently camp in semi secluded areas and remain in and about business districts during usual business hours. The public needs to be educated on the fact donations of the greatest benefit to homeless persons are those directed to organizations that help feed, clothe, and provide vital services to those in need. Donations from citizens given directly to solicitors most often end up being used to purchase alcohol, tobacco products, or illicit drugs that do harm rather than good. The Auburn Police, the Placer County Sheriff, and service providers throughout Placer County have agreed to partner to educate the public and offer methods to direct donations from the public to organizations that will use the money to aid individuals in a positive and at times life saving means. This approach has proven to be successful in the City of Roseville and the same success can be achieved in the City of Auburn and surrounding areas.

Discussion from City Attorney

As the City Council directed, I attached background materials which discuss the city's legal power to regulate solicitations and the limitations on that power imposed by our constitutions. The First Amendment of the United States Constitution, as well as the free speech clause of the California Constitution, limit the ability of a city to regulate solicitations. Any regulation of speech must be content neutral – a city cannot prefer one type of solicitation over another type of solicitation. However, cities can impose reasonable restrictions on the time, place and manner of solicitations.

Because of these legal constraints, the City Attorney has concluded that Chapter 116, as written, is legally unenforceable, and recommends that the City Council either update or repeal Chapter 116. If the Council is not comfortable with the scope of the proposed solicitation ordinance – which applies throughout the City – it might choose to limit the ordinance to residential zones or to residential zones and residences in other zones.

Discussion from Police Chief: Solicitation Related Problems Within Auburn

The Police Chief recommends that the City Council enact both ordinances to curtail the continued rise in bothersome solicitations within the City. Solicitations by way of door to door sales appear at times less intrusive because our citizens are in the safety of their homes when contacted. Citizens have for years called upon the police department when persons engaging in door to door sales seem “suspicious” or without legitimate business. Examples include young adults admittedly from out of the Auburn area or from another state asking for cash donations for a “job program” they are participating in. Common complaints by residents are the solicitors are

rude and pushy in their attempts to get access into the resident's home. A specific incident of rude behavior occurred when a solicitor attempting to sell magazines door to door became aggressive and angry because the resident declined to purchase a magazine or give a cash donation upon request.

Occurrences that lend credibility for the need to have a valid solicitation ordinance can be found in the following examples. First, a resident contacted police in February of 2009 to complain about rude and pushy solicitors attempting to sell magazines door to door. When police officers located the group none of the individuals possessed the required business license or solicitor permit. One individual was found to be from Newark, N. J. and have 80 outstanding arrest warrants from the State of North Carolina. The warrants related to fraudulent magazines subscription sales throughout that state. The individual had a number of alias names with an additional warrant issued by one of our neighboring counties. It appeared in this instance a crime of fraudulent sales was averted by a phone call to law enforcement.

In February 2010, an elderly Auburn resident contacted police to report a theft and fraudulent payment of a check by a solicitor that had come to her door early in the month and sold her magazine subscriptions. The solicitor reportedly distracted the woman by requesting a drink of water and then removed a blank check from her unattended check book. This solicitor was subsequently arrested and found to have a prior history of similar criminal activity.

These are just two instances of crimes against our citizens that may be averted when an enforceable ordinance is in place that requires the issuance of permits and encourages residents to look for these permits prior to making purchases or giving donations of any kind. The Auburn Police Department is unable to proactively deal with solicitor complaints of this kind without an updated ordinance, therefore officers have refrained from issuing citations for these violations. An accurate count of violations is unavailable because of the inability to issue citations; rather solicitors are contacted and advised of the city requirement to obtain the permit. Most often the individuals will leave the area and move to another neighborhood all the while out of compliance with local regulation.

AGGRESSIVE SOLICITATIONS

The problem of aggressive solicitation or panhandling donations by persons in and about business districts has increased steadily in recent years. The exact cause of the increase is unknown; however it has likely increased due to several factors. One reason given is directly from solicitors who have been contacted by Auburn Police Officers investigating solicitation complaints. The offender's state they have moved away from cities such as Roseville because of the strict enforcement of their aggressive solicitation ordinance. They admittedly settled in Auburn because the city has no such ordinance and the police cannot cite or take action when responding to complaints.

Of importance is a recent report issued by the U.S. Department of Housing and Urban Development (HUD) regarding the number of homeless persons nationwide. The 2009 Annual Homeless Assessment Report to Congress, stated the number of homeless individuals across the United States dropped slightly between 2008 and 2009 while the number of homeless families

living in shelters increased by seven percent. This same report revealed a one percent increase in overall homelessness from 2009 to 2010. Reportedly, chronic homelessness continued to decline dropping by one percent. This drop in chronic homelessness is believed to be the result of the implementation of a number of programs and best practices being put in place to provide permanent housing to individuals in need.

Placer County homeless numbers for a combined total of (sheltered and non-sheltered) “point – in – time” homeless count rose from 587 to 616 during the same time frame. Sacramento County experienced a similar increase from 2,615 to 2,800 while El Dorado County fell from 150 – 146. Interestingly, while services continue to step up and help displaced families the number for the homeless/transient population seems to remain consistent if not higher by accounts stated from police officers dealing with homeless persons on the street.

The numerous solicitation complaints handled by Auburn Police consistently involve lone adult males and occasionally several adult males soliciting donations together. They position themselves on street corners, in front of and inside businesses, at parking lot entrances and throughout the lot, near public transportation centers and other locations readily used by the public. When asked, Auburn Police Officer’s could not recall an instance an entire family was reportedly asking for donations and certainly not in an aggressive manner.

Contacts with persons reported to be aggressively soliciting money from citizens consist of local homeless persons more than 50% of the time according to estimates from Auburn Officer’s. Many of these individuals have been consuming alcohol and at times are intoxicated to the point they are arrested for public intoxication. A survey conducted by the Placer County Adult Systems of Care revealed 82 chronically homeless individuals reside throughout Placer County. The City of Auburn consistently has approximately ten chronically homeless persons that camp in and around the city limits. These individuals have been contacted numerous times for public intoxication, panhandling, disruptive behavior in public and more.

These chronically homeless persons have been responsible for multiple calls from local businesses because of their rude and aggressive behavior toward customers attempting to shop in their stores. The Savemart store manager and employees have sent several letters complaining of offenses by transients frequenting their store including the following list of offenses; drinking in public, harassing customers and employees, obstructing daily business, panhandling at store front entrances, passing out inside the restrooms, using the restroom to bath, vomiting on the storefront sidewalk, and more. Customers have complained to the store manager to the point they have indicated they will no longer come to this location to do business. Citizens reportedly are fearful of the aggressive nature of the panhandlers and feel personally threatened when they are present. This same complaint has been made by other businesses in the area.

Officers have limited ability to deal with these violators unless they observe a crime other than panhandling taking place. The offenders must be under the influence of alcohol and/or drugs and unable to care for themselves before they can be arrested for public intoxication. Behavior such as theft of property, fighting in public, making threats, or other behaviors have been the legal basis for officers to remove these individuals from the public areas they tend to congregate to solicit donations. Officers contact these individuals and most often can only ask them to leave

per the request of the property manager or business representative. They problem moves to another location and the complaints continue from unhappy businesses and customers alike.

Perhaps the most compelling reason to implement an ordinance against panhandling is for the safety of the individuals actually soliciting the donations. Panhandlers put themselves into dangerous situations as well as create concern for motorists when they stand on street corners and approach drivers stopped at intersections. They not only distract drivers that could cause an accident, but they expose themselves to the possibility of being struck by another distracted driver. Many of these individuals are intoxicated and impaired to the point they have poor judgment.

Another safety issue relates to the conflicts that occur when some individuals are approached by panhandlers. Verbal confrontations have occurred when citizens attempting to shop are confronted by panhandlers as well as those conflicts that occur between the homeless/transient individuals themselves. Auburn Police have investigated 29 robbery offenses in the past two and a half years. Of that total number, eight have involved transient subjects. This has included robbery with assaults such as stabbing, etc. These instances occur for several reasons that I can point to. The fact transient/homeless persons have the ability to panhandle without consequence in the city allows them to solicit often enough to obtain money to continue to live on the streets. Citizens believe they are helping these individuals when in fact they may only be providing funds to the panhandling person to then purchase alcohol and drugs that do further harm to the person. This behavior then leads to continued addiction and conflict with others.

This cycle of panhandling and the ability to refuse to participate in community non-profit or county service programs is a death sentence to some local transients. In the past two years transient individuals that have been contacted while panhandling at shopping centers within the city limits and north Auburn areas have died by vehicle vs. pedestrian accidents and medical problems including alcohol related causes. Auburn community members need the ability to donate to homeless and transient individuals through legitimate means as these donations are used in a healthy positive and for some life saving way by non-profit service providers.

The local non-profit organization "The Gathering Inn" is just one example of local resources to help anyone that is homeless or transient and in need of food, shelter and more. In 2010, the following services were provided to individuals in need in Placer County's southern region including Auburn.

- The Gathering Inn (TGI) provided **19,300 bed nights** and served **457 people**.
- **71%** had never used TGI services before.
- **25%** of those people went into housing of some type.
- An average of **53 people received housing per night**, up from 46 the previous year.
- Our **Community Medical Clinic** saw **357 people**, 150 of whom said that they would have gone to an emergency room had it not been for the clinic.
- **36 people** stayed at the Interim Care Program house.
- The Clothing Closet provided clean clothes to an average of **40 people** a day, and was open on Sat. and Wed.

- **51 guests** received substance abuse treatment.

These statistics indicate a large group of people are afforded services if they so choose. Law enforcement and area non-profit service providers admit a segment of the homeless population refuse assistance because it requires they discontinue the abusive consumption of alcohol and drugs. Homeless persons refuse to have the needed Tuberculosis tests done to stay in the shelter offered through programs such as The Gathering Inn. Services such as these can be found in Auburn and Roseville with an ever growing collaboration of efforts to educate the public to stop giving money to the homeless only to have them use it to continue their addictive cycle of behaviors.

With the enactment of this ordinance, the Auburn Police Department will partner with the Placer County Sheriff's Department and Roseville Police Department to jointly share information on resources to educate officers and staff dealing with the homeless/transient population. Together we will direct donations to proven and successful service providers such as the Salvation Army and The Gathering Inn. The efforts to educate the public throughout the region will limit the opportunity for panhandlers to move to shopping centers or street corners in neighboring jurisdictions. This will in turn encourage these individuals to pursue the numerous resources and help already available throughout this region.

Statistics show that nationally the number of individual homeless persons is declining while homeless families are increasing. These numbers indicate that is a vast array of services available to families and individuals willing to seek the services. The challenge ahead is to put in place the legal tools such as this aggressive solicitation ordinance and community involvement to direct individuals to the care available. Cooperative efforts by law enforcement, local business districts, county services, and non-profit organizations will help to manage the problem of panhandling throughout this region as well as attain the goal of helping homeless and transient persons receive the care and services they need.

Solicitation Ordinance

Existing Solicitation Ordinance

In 1973, existing Chapter 116 was added to the City's municipal code, and it was most recently revised in 1977. The municipal code prohibits the sale or attempted sale of goods on city streets or sidewalks without the prior approval of the Police Chief. Additionally, no person may enter any residential real property to solicit without a permit from the Police Chief, or permission from the owner or occupant.

The Police Chief may only issue a permit if the applicant paid the required processing fee and the Chief finds the "applicant is of sound moral character, is financially responsible, and that the proposed activity will not unreasonably interfere with vehicular or pedestrian traffic control or the reasonable enjoyment of the residential use of real property of the citizens of the city." The applicant may appeal any denial of a permit application.

Since the code's last amendment more than 35 years ago, courts have substantially refined the legal standards relating to municipal regulation of solicitation. The level of discretion afforded

the Police Chief under the existing code and the relatively amorphous standards under which that discretion is exercised are no longer consistent with judicial interpretations of the First Amendment.

Proposed Ordinance

Like the current ordinance, the proposed ordinance prohibits “solicitation” in the city without first having obtained a permit from the city manager.

Authority is granted to the city manager because Section 10.09 of the code allows any duty or power under the code to be delegated. We generally reference only the city manager in the code (and the community development director in the zoning ordinance) to avoid the need for code amendments as position titles and responsibilities change over time.

“Solicitation” is precisely defined in section 116.02, but roughly means offering to sell things of value or offering to provide services while soliciting in a public or quasi-public location. The new ordinance broadens the definition of “solicitation” to include more *types* of solicitation including, for example, individuals seeking work. This is to avoid any contention that the ordinance regulates based on the content of the speech involved. The ordinance now clearly also applies to the distribution of handbills. The *location* of such regulated solicitations is also expanded to include “any place of business open to the public generally” (e.g., shopping centers). The ordinance expressly does *not* regulate political or religious speech because the City cannot regulate that speech in the same way it can regulate commercial speech. However, the ordinance consciously applies to all charitable or commercial solicitations because any exceptions for favored classes of speakers will make the ordinance vulnerable to First Amendment challenge.

When a permit has been issued to any person, the agents and solicitors for such person are not required to obtain individual permits. Each solicitor is required to carry proof of a valid solicitation permit.

No person may solicit any dwelling if there is a sign indicating “No Solicitations,” “Do Not Disturb” or any similar posting. Various forms of aggressive solicitation are also prohibited, as are fraudulent solicitations and solicitations to or from moving vehicles.

To obtain a permit, the permit application must be filed at least seven days prior to any solicitation, unless good cause is shown to apply late. The City Manager must issue the permit unless he makes one of three specific findings (that the application is incomplete, the proposed activity would be illegal, or the application is false); there would no longer be any “moral character” requirement, as such requirements are no longer lawful. If the permit is denied, the applicant may appeal the denial to the City Council. Permits will be issued for periods of between 30 days and six months.

Any person intentionally violating the chapter is guilty of a misdemeanor although it is not anticipated that the City will routinely use criminal enforcement of this ordinance absent reason to believe more serious crime is involved (as someone posing as a solicitor to “case” a property or stalk someone). The City is more likely to rely on warnings, administrative citations, and

other non-criminal remedies. Nonetheless the Chief of Police recommends retaining the possibility of criminal enforcement in appropriate cases.

Aggressive Solicitation Ordinance

The proposed ordinance would add Chapter 121 to the municipal code, and would provide, “No person shall solicit, ask or beg in an aggressive manner in any public place.”

The ordinance prohibits the *manner* of solicitations in six ways in which no reasonable person would have been willing to be subject to the solicitation. The ordinance prohibits solicitations that (1) put people in fear of physical harm or property damage, (2) involve non-consensual touching; (3) would interfere or inhibit a person or vehicle’s free passage; (4) involve violent or threatening gestures; (5) involve persistent following, even after a solicitation has been declined; and (6) involves abusive language likely to provoke a violent reaction.

The ordinance also prohibits solicitations in certain *times and places* in which no reasonable person would be willing to be subjected to a solicitation: (1) on public property within 15 feet of an ATM, or entrance to an ATM facility, bank, or check cashing business; (2) while in a right of way, approaching of a driver of a motor vehicle that is travelling (or stopped in traffic); and (3) in publicly owned or operated vehicles (*e.g.*, buses).

In all these situations, the solicitation is unreasonable due to its time or place. In all three situations, people are substantially more likely to be threatened with if a solicitation is made in that manner, as the people solicited are a “captive audience.” A person just completing a financial transaction or leaving a bank obviously has cash in hand, may find it harder to say “no” to an unwelcome solicitation and may feel more apprehensive when approached by unwelcome strangers. People in motor vehicles or buses cannot easily (or legally) exit without some delay or meaningful inconvenience. With the inability to walk away, unwelcome solicitations are particularly threatening and confrontations may result. Given the time, place, and manner of the solicitations, including the value that the people are known to have on their person, implicit threats that often underlie such solicitations are magnified.

Solicitations of Motorists

Furthermore, solicitations to or from drivers or occupants of traveling motor vehicles are inconsistent with the central purpose of public roads: safe and efficient transportation. If vehicle occupants are solicited while the vehicles are in traffic, drivers would be unable to drive in an efficient manner and would be likely to impede traffic as a result. Further, the solicitor is likely to violate traffic safety laws while approaching the vehicle, endangering him- or herself and others.

To comply with case law interpreting the first amendment, this ordinance, intentionally does *not* regulate individuals soliciting without approaching the vehicle. For example, if a person otherwise complies with laws (*e.g.*, has any required solicitation permit and is not unlawfully in the street) a person could still legally hold up a sign that says “Hire Me”, “Hungry, Please Help”, “Oranges for Sale”, or even “Sign the Petition to Impeach Candidate X.” The mere act of holding up a sign does not by itself impede traffic or cause such a significant distraction to safe

traffic flow that it should be prohibited. This ordinance still allows drivers to choose to respond to the solicitation by legally parking the vehicle, and then responding to the solicitation without obstructing traffic.

The issue of solicitations of drivers of vehicles has been litigated extensively in the context of day laborers and the courts have reached different conclusions. In 1995, the California Second District Court of Appeal in Los Angeles upheld such an ordinance on traffic safety grounds,¹ while in 2000 the federal district court in Los Angeles overturned a similar ordinance as unnecessarily burdening free speech.² The Ninth Circuit is expected to rule on the issue in the next year or so.³ The defense of this portion of the aggressive solicitation ordinance will turn on tying the ordinance to a legitimate traffic safety rationale. While the City Attorney concludes this aspect of the ordinance is lawful and defensible, the Council may choose not to legislate in this area until the law becomes more settled.

Alternatives Available; Implications of Alternatives

We have identified five options for the City Council to consider:

1. Adopt both ordinances, as drafted.
2. Adopt both ordinances, but only after narrowing the solicitation ordinance to apply only to solicitations of residences;
3. Adopt both ordinances, but only after narrowing the aggressive solicitation ordinance to exclude the solicitation of persons in motor vehicles.
4. Adopt only the solicitation ordinance.
5. Adopt neither ordinance and instruct staff to return with an ordinance to repeal the existing solicitation ordinance (Chapter 116)

Fiscal Impact

The staff and legal services necessary to prepare this ordinance are budgeted resources. Adoption of the ordinance will update the municipal code consistent with current law, thereby decreasing the City's potential liability and need for legal services. The expansion of the scope of the regulation of solicitations should not meaningfully affect the workload of city police officers.

Summary Recommendation:

The City Attorney recommends that the City update or repeal Chapter 116, the current Solicitation Ordinance. If the City Council wishes to amend either ordinance presented here, those amended must be content-neutral, and only impose reasonable restrictions on the time, place or manner of the solicitations.

¹ *Xiloj-Itzep v. City of Agoura Hills* 24 Cal.App.4th 620 (1994).

² *Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) v. Burke* (CD Cal 2000) 2000 U.S. Dist LEXIS 16520.

³ *See Comite de Jornaleros de Redondo Beach v. City of Redondo Beach* (C.D. Cal. 2006) 475 F.Supp. 2d. 952 [district court awarded attorney fees of \$208,562.66] (argued May 9, 2008 and awaiting decision).

The Chief of Police recommends that the Council waive full reading and introduce both ordinances.

c: Bob Richardson, City Manager
Valerie Harris, Chief of Police



ATTACHMENT

2. Due Process

§9.102 a. Vagueness

A law is not void for vagueness if it is (*U.S. v L. Cohen Grocery Co.* (1921) 255 US 81, 89, 65 L Ed 516, 41 S Ct 298):

- Written so that there is "an ascertainable standard of guilt"; and
- "[A]dequate to inform persons accused of violation ... of the nature and cause of the accusation against them."

See *City of Chicago v Morales* (1999) 527 US 41, 144 L Ed 2d 67, 119 S Ct 1849 (criminal street gang loitering ordinance that failed to establish minimal guidelines for law enforcement was found to be unconstitutional).

Some aspects of Pen C §647 have failed this test. For example, Pen C §647(e) requires a person who is loitering or wandering from place to place to provide credible and reliable identification on request of a police officer. The court found this requirement was unconstitutionally vague because it did not specify what constituted "credible and reliable identification." *Kolender v Lawson* (1983) 461 US 352, 75 L Ed 2d 903, 103 S Ct 1855. The provisions of Pen C §647(e) still exist in its unconstitutional form, but are no longer enforced. See *People v Superior Court (Caswell)* (1988) 46 C3d 381, 250 CR 515 (upholding Pen C §647(d)).

§9.103 b. Overbreadth

A statute is overbroad if it proscribes expressive conduct protected by the First Amendment. *Roulette v City of Seattle* (9th Cir 1996) 97 F3d 300. To successfully challenge a loitering statute for being overbroad, the challenger must show that the statute punishes the First Amendment activities and does not regulate criminal conduct. However, the Supreme Court has held that it is inappropriate to entertain an overbreadth challenge absent a realistic danger that an ordinance will significantly compromise recognized First Amendment protections of individuals not before the Court. See *City of Los Angeles v Taxpayers for Vincent* (1984) 466 US 789, 801, 80 L Ed 2d 772, 104 S Ct 2118.

§9.104 3. Right to Free Assembly and Association

Use of loitering statutes to disperse groups of people perceived as undesirable violates the right to free assembly and association. The First Amendment and Fourteenth Amendment do not permit government to criminalize the exercise of the right of assembly simply because its exercise may annoy some people. *Coates v Cincinnati* (1971) 402 US 611, 29 L Ed 2d 214, 91 S Ct 1686; *Roulette v City of Seattle* (9th Cir 1996) 97 F3d 300 (on facial challenge to ordinance prohibiting sitting or lying on sidewalk, Seattle's ordinance was found not to be directed at homeless persons on public sidewalks and thus did not violate substantive due process of these persons). See also *Amster v City of Tempe* (9th Cir 2001) 248 F3d 1198 (upholding under facial challenge ordinance requiring permit to sit on sidewalk but leaving open question of validity under future as-applied challenge).

§9.105 4. Preemption

Local vagrancy and loitering statutes generally are not preempted by state law. See *Yuen v Municipal Court* (1975) 52 CA3d 351, 125 CR 87. However, a local ordinance that criminalizes conduct that is already criminal under state law may encounter preemption problems. For example, at least one court has determined that an ordinance prohibiting loitering for soliciting an act of prostitution was preempted by state law regulating criminal sexual conduct. *Gates v Municipal Court* (1982) 135 CA3d 309, 185 CR 330 (constitutionality of ordinance may be challenged on grounds of vagueness and overbreadth).

§9.106 5. Cruel and Unusual Punishment

A city ordinance designed to address sleeping by homeless persons in public places by criminalizing sitting, lying, or sleeping at all times on public streets and sidewalks violated the Eighth Amendment's prohibition against cruel and unusual punishment. See *Jones v City of Los Angeles* (9th Cir 2006) 444 F3d 1118, vacated as moot (9th Cir 2007) 505 F3d 1006.

b. Three Types of Forums

§9.120 (1) Traditional Public Forum

A "traditional public forum" is a place that by long tradition has been used by the public at large for the free exchange of ideas. Laws regulating the content of speech in such forums are subject to strict scrutiny, *i.e.*, speakers can be excluded from a traditional public forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.

Examples of traditional public forums include:

- Public parks (see *Ward v Rock Against Racism* (1989) 491 US 781, 790, 105 L Ed 2d 661, 109 S Ct 2746);
- Public streets (see *Frisby v Schultz* (1988) 487 US 474, 481, 101 L Ed 2d 420, 108 S Ct 2495; *Boos v Barry* (1988) 485 US 312, 318, 99 L Ed 2d 333, 108 S Ct 1157); and
- Publicly owned pedestrian malls (see *American Civil Liberties Union v City of Las Vegas* (9th Cir 2003) 333 F3d 1092, 1094, cert denied (2004) 540 US 1110).

But see *Madsen v Women's Health Ctr.* (1994) 512 US 753, 129 L Ed 2d 593, 114 S Ct 2516 (injunction restricting anti-abortion protestors to 36-foot buffer not subject to heightened scrutiny but rather to test asking whether injunction "burdens no more speech than necessary to serve a significant governmental interest"); *S.O.C., Inc. v County of Clark* (9th Cir 1998) 152 F3d 1136 (anti-leafletting ordinance that was not expressly limited to commercial speech met test for issuance of preliminary injunction). For a contrary opinion on an anti-leafletting ordinance, see *Klein v City of San Clemente* (9th Cir 2009) 584 F3d 1196, cert denied ___ US ___, 176 L Ed 2d 183, ___ S Ct ___ (city failed to show that leafletting of vehicle windshields created more litter than city could clean up). For further discussion of leafletting, see §9.133.

§9.121 (2) Designated or Limited Public Forum

A designated or limited public forum is property that the state has opened for expressive activity by part or all of the public. A designated public forum can either be limited or unlimited in character. A designated public forum is not created by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse.

Examples of designated or limited public forums include:

- City council chambers (see *White v City of Norwalk* (9th Cir 1990) 900 F2d 1421);
- School district's literature distribution program (see *Hills v Scottsdale Unified Sch. Dist. No. 48* (9th Cir 2003) 329 F3d 1044); and
- University's student activity fund (see *Rosenberger v Rector & Visitors of the Univ. of Virginia* (1995) 515 US 819, 132 L Ed 2d 700, 115 S Ct 2510).

A content-based regulation of speech in a designated public forum is subject to strict scrutiny. But see *Hopper v City of Pasco* (9th Cir 2001) 241 F3d 1067, 1075, cert denied (2001) 534 US 951 (Ninth Circuit differentiates between designated and limited public forums and applies lower level "reasonableness test" to latter).

§9.122 (3) Nonpublic Forum (All Remaining Public Property)

A nonpublic forum is not dedicated to general debate or the free exchange of ideas. The First Amendment does not forbid a viewpoint-neutral exclusion of speakers who would disrupt a nonpublic forum and hinder its effectiveness for its intended purpose. *International Soc'y for Krishna Consciousness, Inc. v Lee* (1992) 505 US 672, 120 L Ed 2d 541, 112 S Ct 2711 (public airport solicitation of funds is nonpublic forum). See *Children of the Rosary v City of Phoenix* (9th Cir 1998) 154 F3d 972, cert denied (1999) 526 US 1131 (advertising panel on municipal bus is nonpublic forum); *Jacobsen v Bonine* (9th Cir 1997) 123 F3d 1272 (highway rest area is nonpublic forum).

Limitations on expressive activity conducted on nonpublic forums must survive a much more limited review. The challenged regulation need only be reasonable as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view.

Examples of nonpublic forums include:

- Ballot pamphlet (see *Clark v Burleigh* (1992) 4 C4th 474, 14 CR2d 455; *Cogswell v City of Seattle* (9th Cir 2003) 347 F3d 809);
- Political advertising on city-owned buses (see *Lehman v City of Shaker Heights* (1974) 418 US 298, 41 L Ed 2d 770, 94 S Ct 2714);
- Political advertising on utility poles on public sidewalks (see *City of Los Angeles v Taxpayers for Vincent* (1984) 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118);
- Solicitation on walkways leading to post office (see *U.S. v Kokinda* (1990) 497 US 720, 111 L Ed 2d 571, 110 S Ct 3115);
- Teachers' mailboxes (see *Perry Educ. Ass'n v Perry Local Educators' Ass'n* (1983) 460 US 37, 74 L Ed 2d 794, 103 S Ct 948); and
- Leafleting and speechmaking in airport terminals (see *Springfield v San Diego Unified Port Dist.* (SD Cal 1996) 950 F Supp 1482).

§9.152 g. Charitable Street Vending or Solicitations

Efforts to solicit support or promote causes on public property by nonprofit groups have been classified as pure speech, the regulation of which is subject to First Amendment scrutiny. Such regulation may not delegate vague or overly broad licensing discretion; time, place, and manner restrictions must be content-neutral, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication. *Riley v National Fed'n of the Blind of North Carolina, Inc.* (1988) 487 US 781, 101 L Ed 2d 669, 108 S Ct 2667.

A city may regulate charitable street vending, just as it may regulate other forms of pure speech on public property. Such regulations must be content-neutral, must be narrowly tailored to serve a significant government interest, and must retain ample alternative channels of communication. See *Doucette v City of Santa Monica* (CD Cal 1997) 955 F Supp 1192 (ordinance prohibiting abusive solicitation in both public and nonpublic forums is content-neutral and narrowly tailored to protect citizens from harassment). Regulation of non-commercial solicitors can raise First Amendment concerns. *Watchtower Bible & Tract Soc'y, Inc. v Village of Stratton* (2002) 536 US 150, 153 L Ed 2d 205, 122 S Ct 2080.

When informative and persuasive speech seeking support for particular causes (pure speech fully protected under the First Amendment) is "inextricably intertwined" with the sale of merchandise seeking such support, then the sale of the merchandise is fully protected speech. *Gaudiya Vaishnava Soc'y v City & County of San Francisco* (9th Cir 1991) 952 F2d 1059, cert denied (1992) 504 US 914. If the "speech element" is purely commercial and a political or religious message is not intertwined with that commercial message, then this is insufficient to transform the entire activity into protected speech. Nonprofit merchandise sales deemed "protected speech" are still subject to time, place, and manner restrictions. *One World One Family Now v City & County of Honolulu* (9th Cir 1996) 76 F3d 1009, cert denied (1996) 519

US 1009 (upholding ordinance banning sales of goods and services on sidewalks, including message-bearing T-shirts).

EXHIBIT A

Chapter 116

SOLICITATION

Section

116.01	Purpose; Intent
116.02	Definitions
116.03	Solicitation Permit Required
116.04	Exemptions
116.05	Application for Permit
116.06	Issuance of Permit
116.07	Term of Permit
116.08	Identification Card
116.09	Revocation of Permit
116.10	Appeals
116.11	Manner of Solicitation and Prohibition
116.12	Violations; Penalties

116.01 Purpose; Intent.

(A) The purpose of this chapter is to regulate solicitation in the city to allow residents to protect their peace and tranquility, to allow the free and safe flow of pedestrian and vehicular traffic, and to deter fraud and other criminal behavior. It is the intent of this chapter to respect the rights of free expression guaranteed by the California and United States Constitutions; to constitute reasonable, content-neutral, time, place and manner restrictions; and to impose the smallest burden on expressive activity necessary to accomplish the objectives of this chapter. This chapter shall be construed in light of this intent.

(B) The exclusion of religious and political motivations from the purposes for solicitation regulated by this chapter is intended to provide greater protection for such expressive activity as required by such judicial decisions as *Watchtower Bible & Tract Soc'y of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002) and not to require city officials to determine what does and does not constitute bona fide religious and political motives except as necessary to do so. Accordingly, in the enforcement of this chapter, city officials shall accept claims that activity is politically or religiously motivated unless evidence is obtained demonstrating those claims to be untruthful.

116.02 Definition.

(A) "Solicit" and "Solicitation" shall mean the request, directly or indirectly, of money, credit, property, financial assistance, patronage or other things of value; hawking, peddling, or vending for charitable (as defined in this section) or commercial purposes; or offering to perform services for payment, which activity is conducted door to door, in any place of public

accommodation, in any place of business open to the public generally, on city streets and sidewalks, in the public parks, or in any public places. These words shall also mean and include the following methods of securing such money, patronage, credit, property, financial assistance or other thing of value:

(1) Any oral or written request;

(2) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication, unless such handbill or written advertisement has been placed within a business open to the public generally with the express permission of the owner or operator of such business;

(3) The offer, sale or taking of orders for any goods, services, merchandise, wares or other tangible items.

A solicitation, as defined in this subsection, shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this subsection.

(B) "Charitable" shall mean and include the words philanthropic, social service, welfare, benevolent, educational, and fraternal, either actual or purported, but not religious or political.

116.03 Solicitation Permit Required.

No person shall engage in solicitation, as that term is defined in section 116.02, within the city without having first obtained a permit from the city manager; but when a permit has been issued to any person, the agents and solicitors for such person shall not be required to obtain individual permits.

116.04 Exemptions.

The provisions of this chapter shall not apply to solicitations made upon premises owned or occupied by the organization on whose behalf such solicitation is made.

116.05 Application Permit.

(A) An application for permit to solicit shall be made to the city manager upon forms prescribed by the city manager and signed under penalty of perjury. The application shall be filed with the city manager at least seven calendar days before a permit to conduct a solicitation may become effective; provided, however, that the city manager may for good cause shown allow the filing of a late application. The city manager shall grant or deny the permit within five business days after the application is made. In the event the city manager fails to act upon a permit within the time prescribed herein, the permit shall be deemed granted.

(B) An application for a solicitation permit shall contain at least the following information: address, telephone and other contact information for the applicant; the purpose for which the solicitation is to be made; the total amount of any funds to be raised thereby, if any; and the use or disposition to be made of any receipts; an outline of the method or methods to be used in conducting the solicitations, including dates and times for the commencement, conduct and termination of the solicitation; a statement to the effect that if a

permit is granted, it will not be used or represented in any way as an endorsement by the city or by any department, officer or employee thereof; the names of other cities or unincorporated areas in which the person registering has solicited or proposes to solicit within the month preceding or following the period in which the person seeks to solicit in the city; and if the applicant is unable to provide any of the foregoing information, the reasons why such information is not available.

(C) If, while any application is pending, or during the term of any permit, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the city manager in writing thereof within twenty-four (24) hours after such change, provided that notice need not be given the city manager other than on a day when city hall is open for business.

116.06 Issuance of Permit.

The city manager shall issue a permit for solicitation unless any of the following have been demonstrated:

(A) That the applicant has failed to provide the required information or to articulate a reasonable basis for his or her inability to do so;

(B) That any statement made in the application is untrue; or

(C) That the proposed time, place or manner of solicitation is inconsistent with any provision of this code or other applicable law, or poses a threat to the public health or safety.

If the city manager denies a permit to any applicant, the city manager, within the time for action on an application set forth in paragraph (A) of section 116.05, shall arrange to send by registered mail or personal delivery written notice of the denial to the applicant, stating the reasons for such denial. The city manager may use fax, email or any other means reasonably calculated to give actual notice to the applicant.

116.07 Term of Permit.

All permits issued under this chapter shall be valid for a period of thirty calendar days unless renewed, revoked or suspended pursuant to the provisions of this chapter. Upon good cause shown, the city manager may issue a permit valid for more than thirty (30) calendar days, but in no event shall a permit be valid for more than six months. Any permit issued under this chapter shall not be transferable or assignable.

116.08 Identification Card.

All persons to whom permits have been issued hereunder shall furnish an identification card to each of their agents and solicitors which card is required to be in the possession of each agent and solicitor and presented upon request when soliciting in the city. Identification cards shall include the permit number, the name and address of the permittee, a statement describing the permittee's purpose and activity, the signature of the permittee or one authorized to bind the permittee, the name and signature of the solicitor to whom the card is issued, the period of time during which the solicitation is authorized, and shall have printed prominently thereon in red: 'This identification card is not an endorsement of any solicitation by the City of Auburn or any of its officers or employees.'

116.09 Revocation of Permit.

Whenever it shall be shown that any person to whom a permit has been issued under this chapter has violated any of the provisions hereof or has violated any other law in connection with the solicitation described in the permit application, the city manager shall immediately suspend the permit and shall notify the permit holder within two business days of the suspension in the manner specified in section 116.06 for a notice of denial of a solicitation application, stating the reasons for the suspension.

116.10 Appeals.

If an applicant or permittee is aggrieved by any action of the city manager to deny, suspend or revoke a permit, he or she may appeal to the city council by filing within fifteen (15) calendar days of the decision a written statement with the city clerk setting forth reasons for the appeal. The city clerk shall set a time and place for hearing the appeal at the next regularly scheduled council meeting which occurs more than 84 hours after the notice of appeal is received and shall notify the applicant or permit holder of the time and place of hearing. The city council may affirm, reverse or affirm with conditions, the decision of the city manager and shall apply the standards of this chapter in doing so. Unless the city council unconditionally approves the permit, it shall state the reasons for its decision in writing. The action of the city council shall be final as to the city, but shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

116.11 Manner of Solicitation and Prohibitions.

No person while soliciting shall do any of the following:

- (A) Solicit without a permit or solicit without carrying the identification card required by this chapter on his or her person.
- (B) Solicit after a permit has expired.
- (C) Solicit at any dwelling, including but not limited to a house, apartment, or condominium where there is a sign indicating "No Solicitations," "Do Not Disturb," or any other indication that the occupants do not wish to be solicited or to have their privacy otherwise disturbed.
- (D) Touch, come into physical contact with, or affix any object to the person of any member of the public, without the express permission of that member of the public.
- (E) Persistently and importunately solicit any member of the public after such member of the public expresses his or her desire not to be solicited.
- (F) Intentionally and deliberately obstruct the free movement of any member of the public on any street, sidewalk or other place or in any place open to the public.
- (G) Threaten any harm to any member of the public who declines to be solicited.
- (H) Misrepresent his or her physical or mental health.

(I) Solicit for any purpose other than those specified in the application upon which the permit was issued.

(J) While the occupant of a moving vehicle, solicit, or attempt to solicit, business or contributions of money or other property, from a person within the public right-of-way who is not in that same vehicle.

(K) Solicit, or attempt to solicit, business or contributions of money or other property, from a person who is the occupant of a moving vehicle or a vehicle stopped in traffic while the solicitor is not in that same vehicle.

116.12 Violations; Penalties.

Any person who intentionally violates any provision of this chapter is guilty of a misdemeanor punishable as provided in chapter 10 of this code.

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ORDINANCE NO. 11-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
CHAPTER 116 OF THE AUBURN MUNICIPAL CODE REGARDING SOLICITORS

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: The City Council of the City of Auburn hereby finds:

1. Individuals and organizations have visited and continue to visit private residential properties, and privately-owned businesses, to peddle goods, wares, merchandise, and services.

2. Some residents and business owners find these activities to not only be threatening but also an invasion of privacy.

3. In addition, some individuals who have claimed to be solicitors have committed fraud and other crimes against residents and business owners.

4. Some solicitors have created a negative, threatening and unwelcoming environment in public places.

5. Unregulated solicitation within the City has become disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places and private residences, but also to an enhanced sense of fear, intimidation and disorder.

6. It is the intent of the City Council in enacting this ordinance to improve the quality of life and economic vitality of the City, and to protect the safety of the general public against abusive conduct of persons engaged in solicitation, by imposing reasonable manner and place restrictions on solicitation while respecting the constitutional rights of free speech for all.

1 Section Two: Chapter 116 of the Auburn Municipal Code is hereby
2 repealed.

3
4 Section Three: A new Chapter 116 of the Auburn Municipal Code is
5 hereby adopted in the form attached hereto as Exhibit A.

6 Section Four: This Ordinance shall take effect thirty days following its
7 adoption as provided by Government Code Section 36937.

8
9 Section Five: Should any provision, section, paragraph, sentence or
10 word of this Ordinance be rendered or declared invalid by any court of
11 competent jurisdiction or by reason of any preemptive legislation, the
12 remaining provisions, sections, paragraphs, sentences or words of this
13 Ordinance shall remain in full force and effect.

14 Section Six: The City Clerk shall certify to the passage and adoption
15 of this Ordinance and shall give notice of its adoption as required by law.
16

17 DATED: _____, 2011
18

19 _____
20 William Kirby, Mayor
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22
23 ATTEST:
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25 _____
26 Joseph G. R. Labrie, City Clerk

27 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
28 that the foregoing ordinance was duly passed at a regular meeting of the City
Council of the City of Auburn held on the _____ day of _____ 2011 by
the following vote on roll call:

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Ayes:
Noes:
Absent:

Joseph G. R. Labrie, City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney

EXHIBIT A

Chapter 121

AGGRESSIVE SOLICITATION

Section

121.01	Definitions
121.02	Aggressive solicitation prohibited
121.03	All solicitation prohibited at specified locations
121.04	Penalty
121.05	Severability
121.06	Non-exclusivity

Section 121.01 Definitions

For purposes of this section:

(A) "Solicit, ask or beg" shall include using the spoken, written, or printed word, or bodily gestures, signs or other means to request an immediate donation of money or other thing of value or to offer the sale of goods or services.

(B) "Public place" shall mean a place to which a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, apartment house or hotel not constituting a room or apartment designed for residence.

Section 121.02 Aggressive solicitation prohibited

(A) No person shall solicit, ask or beg in an aggressive manner in any public place.

(B) "Aggressive manner" shall mean any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to:

(a) fear bodily harm to him- or herself or to another, or damage to or loss of property, or

(b) otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without the consent of that person or an occupant or owner of that vehicle;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited;

(5) Persisting in closely following or approaching a person, after the person has informed the solicitor by words or conduct that he or she does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

(6) Using profane, offensive or abusive language that is likely to provoke a violent reaction.

Section 121.03 All solicitation prohibited at specified locations

(A) Banks, Check Cashing, and ATMs. No person shall solicit, ask or beg on public property within 15 feet of any entrance or exit of any bank or check cashing business during its business hours or within 15 feet of any automated teller machine when it is available for customer use. When an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility.

(1) Definitions. For purposes of this section:

(a) "Bank" means any member bank of the Federal Reserve System, and any bank, savings and loan association, credit union, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of California or the United States whether or not the deposit of such institutions are insured by the Federal Deposit Insurance Corporation.

(b) "Check cashing business" means any person licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with section 12000.

(c) "Automated teller machine" or "ATM" shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account.

(d) "Automated teller machine facility" shall mean an area inside a structure in which one or more automated teller machines are located but excluding an area within any structure the primary purpose or function of which is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings.

(B) Motor vehicles. No person shall approach an operator or occupant of a motor vehicle travelling within a public right of way for the purpose of soliciting, asking or begging. A vehicle is "travelling" for this purpose even though stopped at an intersection or otherwise in compliance with traffic control laws and regulations but not if parked legally. This prohibition does not apply to solicitations related to emergency repairs requested by an operator or occupant of a vehicle.

(C) Public transportation vehicles. No person may solicit, ask or beg in any publicly owned or operated vehicle, including a bus, designed, used or maintained for carrying 10 or more persons, including the driver.

Section 121.04 Penalty

An intentional violation of this section is punishable as a misdemeanor pursuant to chapter 10 of this code.

Section 121.05 Non-exclusivity

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter.

ORDINANCE NO. 11-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
THE AUBURN MUNICIPAL CODE TO ADD A NEW CHAPTER 121 REGARDING
AGGRESSIVE SOLICITATION

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: The City Council of the City of Auburn hereby finds:

1. Aggressive solicitation contributes to the loss of full access to public places, as solicitors often directly or indirectly block free access to these locations.

2. Aggressive solicitation also creates an implicit threat of immediate physical harm to any persons unwilling to give money or act in the manner requested by the solicitor, and sometimes leads to violence.

3. When a person visits a bank, automated teller machine, or check cashing businesses, it is obvious that such persons have cash. Also, when at, or entering or exiting the vicinity of locations, the patrons of the locations are particularly vulnerable and more susceptible to fear and surprise than when elsewhere.

4. Motorists are sometimes confronted by persons who without permission wash their vehicle's windows at traffic intersections, despite explicit indications by drivers not to do so, and yet, because the motorist is sitting in a vehicle at an intersection, in most cases, the person cannot legally exit the car and is a "captive audience." In these situations, the threat of aggressive solicitation is particularly dangerous because the person is sometimes implicitly threatened with being "carjacked" and is often implicitly threatened for failure

1 to pay for a service already rendered. Additionally, when people in traveling
2 vehicles are approached by solicitors in the right of way, the solicitations can
3 impede traffic, and can create dangers to both vehicular and pedestrian traffic.

4
5 5. Aggressive Solicitation in a public transportation vehicle is
6 particularly threatening and dangerous because a person in a bus or a train or
7 other public transportation vehicle is in essence, a "captive audience." With
8 the inability to walk away without some personal cost, unwelcome solicitations
9 are particularly threatening and confrontations may result.

10 6. Accordingly, the City Council concludes that the limitations in
11 expressive activity included in this ordinance are reasonably necessary to
12 prevent actual and perceived assaults and traffic safety hazards and to
13 preserve the public peace. Further, the City Council finds that sufficient
14 alternative locations are available within the City for solicitations of this kind to
15 occur that the balance the City Council has struck between protecting the
16 public and facilitating solicitation is appropriate.

17
18 Section Two: Chapter 121 is hereby added to the Auburn Municipal Code
19 in the form attached hereto as Exhibit A.

20 Section Three: This Ordinance shall take effect thirty days following its
21 adoption as provided by Government Code Section 36937.

22
23 Section Four: Should any provision, section, paragraph, sentence or
24 word of this Ordinance be rendered or declared invalid by any court of
25 competent jurisdiction or by reason of any preemptive legislation, the
26 remaining provisions, sections, paragraphs, sentences or words of this
27 Ordinance shall remain in full force and effect.
28

1 Section Five: The City Clerk shall certify to the passage and adoption
2 of this Ordinance and shall give notice of its adoption as required by law.

3
4 DATED: _____, 2011

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6 _____
7 William Kirby, Mayor

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10 ATTEST:

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12 _____
13 Joseph G. R. Labrie, City Clerk

14 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
15 that the foregoing ordinance was duly passed at a regular meeting of the City
16 Council of the City of Auburn held on the _____ day of _____ 2011 by
the following vote on roll call:

17 Ayes:

18 Noes:

19 Absent:

20 _____
21 Joseph G. R. Labrie, City Clerk

22 APPROVED AS TO FORM:

23
24
25 _____
26 Michael G. Colantuono, City Attorney

Reports from the Bee's investigative team

June 21, 2010

HUD releases fresh national, local data on the homeless

Nationally, the total number of homeless individuals dropped five percent between 2008 and 2009, though the number of homeless families rose. That's according to the 2009 Annual Homeless Assessment Report to Congress, released last week by the U.S. Department of Housing and Urban Development.

The data -- based on single-night and 12-month counts of the homeless -- covers both sheltered and unsheltered people. The report found the number of families staying in shelters increased seven percent from 2008 to 2009, and the length of stay rose from 30 to 36 days. Of the individuals using shelters: 78 percent were adults; 61 percent were male; 62 percent were members of a minority; 31 percent were aged 31-50; and 38 percent had a disability.

The HUD report also provides statistics for some localities including Sacramento City/County, Roseville/Placer County; Davis/Woodland/Yolo County and El Dorado County. Between 2008 and 2009 the total (sheltered and non-sheltered) "point-in-time" homeless count rose in Sacramento County (2,615 to 2,800), in Placer County (587 to 616) and in Yolo County (414 to 491). It fell in El Dorado County (150 to 146).

<http://blogs.sacbee.com/the-public-eye/2010/06/hud-releases-fresh-data-on-the-homeless.html>

Read more: <http://blogs.sacbee.com/the-public-eye/2010/06/hud-releases-fresh-data-on-the-homeless.html#ixzz1Q2LQ0Z3L>

HUD ISSUES 2009 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS
Individual homelessness down; Family homelessness up for second straight year

WASHINGTON The total number of homeless persons in America dropped slightly between 2008 and 2009 although the number of homeless families increased, almost certainly due to the ongoing effects of the recession. That's the conclusion of the **2009 Annual Homeless Assessment Report to Congress**, a yearly study by the U.S. Department of Housing and Urban Development designed to measure the scope of homelessness across the country.

HUD's latest report finds that 643,000 persons were homeless on a given night in 2009 while roughly 1.56 million people, or one in every 200 Americans, spent at least one night in a shelter during 2009. While the total estimated number of persons who experience homelessness as individuals declined by 5 percent, the number of homeless families increased for the second straight year.

As a nation, we appear to be doing a better job sheltering those who might otherwise be living on our streets but clearly homelessness is impacting a greater share of families with children, said HUD Secretary Shaun Donovan. As patterns of homelessness change, we must use the latest data to tailor our response. The Obama Administration is committed to ending homelessness in all its forms.

HUD's annual assessment is based on two measures of homelessness:

- **Point-In-Time Snapshot Counts** these data account for sheltered and unsheltered homeless persons on a single night, usually at the end of January. On a given night in January 2009, volunteers throughout the nation counted 643,000 homeless people. A majority of these communities reported increases in the number of sheltered persons and decreases in unsheltered or street homeless revealing a greater capacity and success in finding housing solutions for those who are homeless.

Long-term or chronic homelessness has continued a pattern of decline in the U.S. since 2006. HUD currently estimates that nearly 111,000 people were chronically homeless on a single night in January 2009, more than a 10 percent drop from 2008 and nearly 30 percent from levels reported in 2006. All of this year's decrease in chronic homelessness occurred among the unsheltered street population. Much of the decline since 2006 may be associated with the dramatic expansion of the permanent supportive housing stock, which increased from 177,000 to 219,000 beds during this time period.

- **12-Month Counts** Using *Homeless Management Information Systems (HMIS)*, these data provide more detailed information on persons who access a shelter over the course of a full year. In the 2009 AHAR, 2,988 counties and 1,056 cities contributed HMIS data to produce national estimates of sheltered homeless. HUD estimates that 1.56 million persons experienced homelessness and found shelter between October 1, 2008 and September 30, 2009. A typical sheltered homeless person is a single, middle-aged man and a member of a minority group. Of all those who sought emergency shelter or transitional housing during 2009, the following characteristics were observed:
 - 78 percent of all sheltered homeless persons are adults.
 - 61 percent are male.
 - 62 percent are members of a minority group.
 - 38 percent are 31-to-50 years old.
 - 64 percent are in one-person households.

- 38 percent have a disability.

HUDs report also reveals the following trends:

From 2008-2009:

- Between 2008 and 2009, the number of individuals in emergency shelters and transitional housing programs dropped by nearly 58,000 people or 5 percent. Meanwhile, sheltered homeless persons in families increased by almost 19,000 people or 3.6 percent.
- When families are considered as households rather than as the separate people in the households, the increase was nearly 11,000 families between 2008 and 2009, a seven percent increase over the 159,142 sheltered homeless families in 2008.

From 2007-2009:

- Between 2007 and 2009, the drop in the number of sheltered homeless individuals was 80,000 people or about 7 percent. This decline may be related to the ability of communities to place people into an expanding stock of permanent housing, which increased from about 177,000 to 219,000 beds during this time period.
- In 2009, nearly 62,000 more family members were in emergency shelter or transitional housing at some point during the year than had been in 2007. Considered as households rather than as separate people, the growth in sheltered family homelessness over the three years was almost 40,000 families, representing a 30 percent increase.

Looking Ahead

The long-term impacts of the recession are unclear. A recent study found a nearly five-fold increase in the rate of housing overcrowding, suggesting that many families are doubling up in response to the economic downturn. If some of these family support networks already are struggling to make ends meet, some of the doubled-up families may find their way into the homeless residential service system during 2010.

On the other hand, as the nation comes out of the recession and as the stimulus funding made available through the *Homeless Prevention and Re-housing (HPRP) Program* starts helping families in crisis avoid shelter, it also is possible that family homelessness will decline during the next reporting period. Indeed, as of May 2010, HPRP has already served more than 350,000 people and approximately 75 percent of the funds have been used for prevention services.

Painter, Gary. 2010. What Happens to Household Formation in a Recession? Research Institute for Housing America and the Mortgage Bankers Association.

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HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business. More information about HUD and its programs is available on the Internet at www.hud.gov and espanol.hud.gov.

http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-

No Increase in Homelessness Despite Recession

PRESS RELEASES | 15 JUN 2011

Contact: Catherine An
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No Increase in Homelessness Despite Recession *Future of homelessness numbers less certain*

Homelessness in the United States did not increase significantly during the height of the recession, according to the Annual Homeless Assessment Report to Congress (AHAR) released by the Department of Housing and Urban Development (HUD) yesterday. The flat numbers, in spite of an idling economy, are a testament to improved homeless assistance systems and the adoption of housing-based strategies to end homelessness. However, budget cuts at the federal, state, and local levels threaten to destabilize the efforts made to avert increases in homelessness.

The report, based on 2010 data, shows a one percent increase in overall homelessness from 2009 to 2010. Subpopulations, including individuals, unsheltered homeless people, and persons in families increased slightly; 0.75 percent, 2.76 percent, and 1.61 percent respectively. Chronic homelessness continued to decline, dropping one percent. Experts largely attribute the continual decline in chronic homelessness to the broad implementation of best practices to serve chronically homeless people, namely permanent supportive housing.

For the first time, the impact of the federal Homelessness Prevention and Rapid Re-Housing Program (HPRP) was included in the AHAR. The \$1.5 billion program, funded by the American Recovery and Reinvestment Act (ARRA), offered communities significant new resources to curb homelessness resulting from the recession. In the first year, HPRP funds prevented and ended homelessness for an estimated 690,000 people and are credited with decreasing the length of time people experienced homelessness in suburban and rural communities, where the average length of stay in an emergency family shelter declined from 62 days to 40 days.

The three-year stimulus program, which ends next year, will leave a considerable hole in the budgets of many local homeless assistance programs. Coupled with cuts to mainstream poverty programs, local and

state services, and the relentless rise in need, experts predict that homelessness may rise in the coming years.

“There’s little question that the federal government’s investment in homelessness prevention and rapid re-housing and local efforts to promote housing-based solutions staved off an increase in homelessness during an economically troubled time,” said Nan Roman, president of the National Alliance to End Homelessness. “But bigger obstacles are ahead. Not only is HPRP ending but federal, state, and local budget cuts will arrest our ability to dedicate the resources necessary to prevent and end homelessness in the face of rising need. Now is not the time to become complacent; now is the time to rally to meet the challenge.”

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